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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,686	02/11/2002	Kenneth Largman	A	9897

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-70543-2/RMA/LM/KRG

EXAMINER

MANOSKEY, JOSEPH D

ART UNIT	PAPER NUMBER
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2113

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/074,686	<b>Applicant(s)</b> LARGMAN ET AL.	
	<b>Examiner</b> Joseph Manoskey	<b>Art Unit</b> 2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on N/A is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/11/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 11 March 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

No copies of the foreign patents or non-patent literature have been supplied and thus have not been considered. All U.S. Patents listed in the IDS have been considered. If the applicant wishes for foreign and non-patent documents to be considered then a new IDS with a copy of the documents should be supplied with the response to this Office Action.

### ***Drawings***

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because no drawings have been supplied with or are referenced to in the specification. The Examiner notes the existence of drawings in the Appendix, however they are not referred to in the specification. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are

required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### ***Double Patenting***

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 2 and 17 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of copending Application No. 10/075,136. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

5. Applicant is advised that should claims 2 and 17 be found allowable, claims 2 and 17 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

6. Claims 3-6 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of copending Application No. 10/075,136. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 2-14, 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Goshey et al., U.S. Patent 6,205,527, hereinafter referred to as "Goshey".

9. Referring to claims 2 and 17, Goshey teaches a method of a computer repairing itself (See Col. 2, line 43 and Col. 4, lines 62-63). Goshey discloses the booting from a first disk drive within a main computer (See Fig. 1A and Col. 5, lines 4-5). Goshey then teaches in response to determining a fault, booting from a second drive that is within the main computer (See Col. 2, lines 56-63 and Col. 5, lines 8-11). Goshey discloses repairing the software on the first boot device (See Col. 4, lines 21-25). Finally Goshey

teaches either maintaining operation using the second boot device or going back to operating off the first boot device (See Col. 4, lines 20-25 and Col. 5, lines 4-5).

10. Referring to claims 3-6, Goshey discloses the method copy software from a device other than the first boot device to the first boot device, the other device being the second boot device (See Col. 5, lines 1-4). Goshey teaches the second boot device containing backup software for copying back to the first boot device (See Col. 2, lines 50-56 and Col. 5, lines 1-4). The backup data includes operation system files and boot files (See Col. 2, lines 51-53).

11. Referring to claims 7 and 8, Goshey teaches the second boot device containing backup software for copying back to the first boot device, this is interpreted as copying one of template, backup, and archive software from a device other than the first boot device onto the first boot device, the other than first boot device being the second boot device (See Col. 2, lines 50-56 and Col. 5, lines 1-4).

12. Referring to claims 9, and 11-13, Goshey discloses a boot management code that will identify drives connected to the computer system and enable booting of the secondary storage device (See Col. 4, lines 40-44). This is interpreted as switching the second boot device thereby making the second boot device bootable, by logically and physically switching the second boot device and altering the identification jumpers of a data storage device to be switched.

13. Referring to claims 10, Goshey teaches the computer detecting the fault of the computer and thus the need for repair (See Col. 4, lines 3-6) and Goshey teaches the system allowing the user to re-boot to the other storage device (See Col. 3, lines 9-14), this is interpreted as generating the signal indicating the need for repair.

14. Referring to claims 14, Goshey teaches the system allowing the user to re-boot to the other storage device (See Col. 3, lines 9-14), this is interpreted as turning on or off the power to a data storage device to be switched.

15. Referring to claim 18, Goshey discloses the method copy software from a device other than the first boot device to the first boot device, the other device being the second boot device (See Col. 5, lines 1-4). Goshey teaches the second boot device containing backup software for copying back to the first boot device (See Col. 2, lines 50-56 and Col. 5, lines 1-4). The backup data includes operation system files and boot files (See Col. 2, lines 51-53). Goshey teaches the second boot device containing backup software for copying back to the first boot device (See Col. 2, lines 50-56 and Col. 5, lines 1-4). Goshey discloses a boot management code that will identify drives connected to the computer system and enable booting of the secondary storage device (See Col. 4, lines 40-44). Goshey then teaches in response to determining a fault, booting from a second drive that is within the main computer (See Col. 2, lines 56-63 and Col. 5, lines 8-11). Goshey teaches the computer detecting the fault of the



computer and thus the need for repair (See Col. 4, lines 3-6) and Goshey teaches the system allowing the user to re-boot to the other storage device (See Col. 3, lines 9-14). Goshey discloses repairing software on the first boot device (See Col. 2, line 43 and Col. 4, lines 62-63). Goshey teaches the second boot device containing backup software for copying back to the first boot device (See Col. 2, lines 50-56 and Col. 5, lines 1-4). Also taught is virus checking (See Col. 12, lines 36-37) and formatting the drive (See Col. 4, lines 65-67).

16. Claims 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Stanley, U.S. Patent 6,457,069.

17. Referring to claim 15, Stanley teaches a network interface card, communications device, coupled to the bus of a computer system and capable of being switched to disable the device, this is interpreted as a communications device for communicating over a communications link to second computer system, a port for communicatively coupling said computer system and said communication device over a bus having a plurality of data lines; and a switch coupled within said data lines selected from said plurality of data lines for enabling and disabling said communications device (See Fig. 1 and Col. 23, lines 20-26).

18. Referring to claim 16, Stanley teaches the communications device being a network interface card disposed within a main computer hardware box and the disabling

of the card is interpreted as the switch being affixed to said network interface card (See Fig. 2 and Col. 23, lines 20-26).

### ***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are closely related repairing systems.

U.S. Patent Application Publication 2002/0053044 to Gold et al.


U.S. Patent 6,317,845 to Meyer et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Manoskey whose telephone number is (571) 272-3648. The examiner can normally be reached on Mon.-Fri. (7:30am to 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDM  
October 28, 2004

  
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